

EXHIBIT “G”

Timegate Studios
 Royalty Report - Section 8
 Quarter Ending September 30, 2009

	9/30/2009		Prior Quarter		9/30/2009	
	Current Quarter		Cumulative to Date		Current Quarter	
	Units	Dollars Collected	Units	Dollars	Units	Dollars
Sales						
70027 Section 8 - X360 - US	33,567	\$ 345,772.11	0	\$ -	33,567	\$ 345,772.11
72027 Section 8 - X360 - Canada	0	\$ -	0	\$ -	0	\$ -
43030 Section 8 - X360 - United Kingdom	0	\$ -	0	\$ -	0	\$ -
43047 Section 8 - X360 - France	0	\$ -	0	\$ -	0	\$ -
43054 Section 8 - X360 - Italy	0	\$ -	0	\$ -	0	\$ -
43061 Section 8 - X360 - Germany	0	\$ -	0	\$ -	0	\$ -
43078 Section 8 - X360 - Spain	0	\$ -	0	\$ -	0	\$ -
43085 Section 8 - X360 - Australia	0	\$ -	0	\$ -	0	\$ -
50027 Section 8 - PC - US	5,689	\$ 177,145.20	0	\$ -	5,689	\$ 177,145.20
52027 Section 8 - PC - Canada	0	\$ -	0	\$ -	0	\$ -
43115 Section 8 - PC - United Kingdom	0	\$ -	0	\$ -	0	\$ -
43122 Section 8 - PC - France	0	\$ -	0	\$ -	0	\$ -
43139 Section 8 - PC - Germany	0	\$ -	0	\$ -	0	\$ -
43146 Section 8 - PC - Italy	0	\$ -	0	\$ -	0	\$ -
43153 Section 8 - PC - Spain	0	\$ -	0	\$ -	0	\$ -
43160 Section 8 - PC - Australia	0	\$ -	0	\$ -	0	\$ -
Net Sales	39,256	\$ 522,917.31	0	\$ -	39,256	\$ 522,917.31
Co Publishing Revenues		\$ -		\$ -		\$ -
Less Cost of Goods Sold (COGS)						
Manufacturing		\$ 3,791,171.90		\$ -		\$ 3,791,171.90
Shipping and Freight		\$ 105,044.21		\$ -		\$ 105,044.21
Discounts, Markdowns		\$ 29,612.79		\$ -		\$ 29,612.79
Bad Credit, Replacements		\$ -		\$ -		\$ -
Taxes		\$ -		\$ -		\$ -
Manufacturing License Fees		\$ -		\$ -		\$ -
Distribution Fees		\$ -		\$ -		\$ -
Sales Commission		\$ -		\$ -		\$ -
Total COGS:		\$ 3,925,828.90		\$ -		\$ 3,925,828.90
Net Revenues:		\$ (3,402,911.59)		\$ -		\$ (3,402,911.59)
Total Royalty Amount Owed to Developer		\$ -				

EXHIBIT “H”

Weiss, Scott

From: Weiss, Scott
Sent: Friday, December 04, 2009 3:56 PM
To: 'Bernie Fischbach'
Cc: Terry Phillips @ SouthPeak; David Stelzer @ SouthPeak; Melanie Mroz @ SouthPeak
Subject: RE: link
Bernie-

I want to make sure we're on the same page. You said that Gone Off Deep didn't receive any money from the sales of Section 8; however, did any other entity or individual that is directly or indirectly connected to your client receive anything of value on the sales?

From: Bernie Fischbach [mailto:BFischbach@fpllaw.com]
Sent: Friday, December 04, 2009 1:39 PM
To: Weiss, Scott
Cc: Terry Phillips @ SouthPeak; David Stelzer @ SouthPeak; Melanie Mroz @ SouthPeak
Subject: RE: link

Scott

I am checking on it but whether the numbers are sell in to the stores or sell through to customers it does not change the fact that GDL had not received any money on these sales.

Bernie

Bernard J. Fischbach, Esq.
Fischbach, Perlstein, Lieberman & Almond LLP
1875 Century Park East, Suite 1450
Los Angeles, CA 90067
T: (310) 556-1956
F: (310) 556-4617
E: bfischbach@fpllaw.com

This message is intended for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately and return the original message to us at the above address. Thank you.

From: Weiss, Scott
Sent: Thursday, December 03, 2009 4:53 PM
To: Bernie Fischbach
Cc: Terry Phillips @ SouthPeak; David Stelzer @ SouthPeak; Melanie Mroz @ SouthPeak
Subject: RE: link

Although the last number is cut off, I've attached a PDF of the webpage.

12/10/2009

EXHIBIT “I”

LAW OFFICES
FISCHBACH, PERLSTEIN, LIEBERMAN & ALMOND LLP

BERNARD J. FISCHBACH
MICHAEL J. PERLSTEIN**
ROBERT H. LIEBERMAN*
PAUL S. ALMOND

A LIMITED LIABILITY PARTNERSHIP
INCLUDING A PROFESSIONAL CORPORATION
1875 CENTURY PARK EAST, SUITE 1450
LOS ANGELES, CALIFORNIA 90067-2713

TELEPHONE
(310) 556-1956

FACSIMILE
(310) 556-4617

DIRECT E-MAIL
bfischbach@fpilaw.com

*A PROFESSIONAL CORPORATION
**ALSO ADMITTED IN NEW YORK

December 3, 2009

VIA FEDERAL EXPRESS
& EMAIL

Scott Weiss
14140 Southwest Freeway
Suite 200
Sugar Land, Texas 77478

**Re: Publishing Agreement for Section 8(the "Game") By And Between Gone
Off Deep, LLC ("GDL") and TimeGate Studios, Inc. ("TG") dated
June 15, 2007 ("Agreement").**

Dear Scott:

In response to your letter to me of November 30, 2009, please be advised that TG does not have the right to audit the books and records of SouthPeak Interactive, LLC. Section 7.3 of the Agreement provides that TG has the right to audit the books and records of GDL.

The earliest that GDL could accommodate TG to audit its books and records would be January 15, 2009. Please be advised that notwithstanding anything to contrary contained in Section 7.3, GDL will allow TG to audit GDL's books and records 2 times, if TG so elects, only during calendar year 2010.

Also please confirm that the independent auditing firm you are using is not being compensated on a contingency fee basis.

If you have any questions please feel free to contact me.

Very truly yours,



Bernard J. Fischbach

Cc: Terry Phillips
Melanie Mroz
David Stezler

EXHIBIT “J”

[Home](#) [My Profile](#) [Tools](#) [Help](#) [Sign Off](#)

Bank of America Direct

~~Greg Z. Ryan~~
~~Head of Treasury Services~~
05/19/2009 16:24 CDT
Last Sign In: 05/19/2009 at 15:40 CDT

Bank of America 

[Payments](#) | [Receipts](#) | **[Treasury](#)** | [Trade](#) | [Images](#) | [Notifications](#)

Transaction Details

Account: Bank of America, Texas 111000012573007000

Date	Amount	Type	Description	Customer Reference
05/19/2009	356,928.00	CREDIT	INCOMING MONEY TRANSFER CREDIT	05742350
Immediate Availability	1 Day Float	2+ Day Float	Text	
356,928.00	0.00	0.00	WIRE TYPE: WIRE IN DATE: 051909 TIME: 1624 ET TRN: 2009051900223519 SNDR REF: 2009051900012833 SERVICE REF: 20090519F1QCZ68C005020 RELATED REF: SOUTHPEAK ORIG: SOUTHPEAK INTERACTIVE 2900 POLO PARKWAY STE 104 MIDLOTHIAN VA 23113-1423 ID: 0000702203513 ORG BK: ID: INS BK: ID: SND BK: SUNTRUST BANK ID: 061000104 BNF: TIMEGATE STUDIOS INC. 14140 SOUTHWEST FREEWAY SUITE 400 SUGAR LAND TX 77478 ID: 488005760019 BNF BK: ID: PAYMENT DETAILS: SOUTHPEAK INV S8- MKTG001 S8-124	

the 5/12/09

[Return to Search Results](#)

[Edit Search Criteria](#)



Jackson, Jennifer

From: Chris Lax @ SouthPeak [clax@southpeakgames.com]
Sent: Friday, October 17, 2008 3:25 PM
To: Chaveleh, Adel
Cc: David Dienstbier @ SouthPeak; Tim Hesse
Subject: M17 Wire Sent Today

Hi Adel,

The payment for Milestone 17 was wired today.

Thanks,
Chris

Jackson, Jennifer

From: Melanie Mroz @ SouthPeak [mmroz@southpeakgames.com]
Sent: Monday, November 03, 2008 1:56 PM
To: Chaveleh, Adel
Subject: RE: Section 8

Hi Adel,

We will ring you at 2:30 CST.

Speak soon,

Melanie



Melanie Mroz | CEO, SouthPeak Games | mmroz@southpeakgames.com
Office: (817) 305.0055 | Cell: (214) 850.7441

From: Chaveleh, Adel [mailto:chavad@timegate.com]
Sent: Monday, November 03, 2008 11:28 AM
To: Melanie Mroz @ SouthPeak
Subject: RE: Section 8

Hi Melanie,

Alan and I are both free today at 2:30 p.m. CST for a call. We can be reached at 281-295-4263.

Please let me know if this works for you.

Best regards,
Adel

From: Melanie Mroz @ SouthPeak [mailto:mmroz@southpeakgames.com]
Sent: Monday, November 03, 2008 10:50 AM
To: Chaveleh, Adel
Subject: RE: Section 8

Hello Adel,

We look forward to speaking with you today. Are you available today at 3:30 CST to speak with Terry and I? If this time is not convenient, please advise as to a good time for you.

Kind Regards,

Melanie



Melanie Mroz | CEO, SouthPeak Games | mmroz@southpeakgames.com

Jackson, Jennifer

From: Melanie Mroz @ SouthPeak [mmroz@southpeakgames.com]
Sent: Wednesday, November 05, 2008 1:08 PM
To: Chaveleh, Adel
Cc: Tim Hesse; David Dienstbier @ SouthPeak
Subject: RE: Section 8 - PS3 Executive Summary

Hi Adel,

Thank you for forwarding this proposal. We are reviewing it and will get back to you early next week. As for the outstanding items list, I have not seen it yet. Please know that we are anxious to get started on these items and are prepared to address them immediately.

Kind Regards,

Melanie



Melanie Mroz | CEO, SouthPeak Games | mmroz@southpeakgames.com
Office: (817) 305.0055 | Cell: (214) 850.7441

From: Chaveleh, Adel [mailto:chavad@timegate.com]
Sent: Monday, November 03, 2008 5:13 PM
To: Melanie Mroz @ SouthPeak
Subject: Section 8 - PS3 Executive Summary

Hi Melanie,

Thanks for your call today. As promised, attached is the Section 8 - PS3 Executive Summary. Please review and let me know if you have any questions.

The "outstanding items" document we discussed during our call is being finalized as we speak and I will have this out to you by end of business tomorrow, at the latest.

Best regards,
Adel

Office: (817) 305.0055 | Cell: (214) 850.7441

From: Chaveleh, Adel [mailto:chavad@timegate.com]
Sent: Monday, November 03, 2008 9:38 AM
To: Melanie Mroz @ SouthPeak
Cc: Terry Phillips @ SouthPeak
Subject: RE: Section 8

Dear Melanie,

Thank you for your email and for payment. We look forward to hearing from you today.

Best regards,
Adel

/*****/

Adel Chaveleh
President/CEO
TimeGate Studios, Inc.

[http://www.timegate.com/
adel@timegate.com](http://www.timegate.com/adel@timegate.com)

Tel: 281.295.4263
Fax: 281.754.4723

From: Melanie Mroz @ SouthPeak [mailto:mmroz@southpeakgames.com]
Sent: Friday, October 31, 2008 3:52 PM
To: Chaveleh, Adel; Chaveleh, Alan
Cc: Terry Phillips @ SouthPeak
Subject: Section 8

Hello Alan and Adel

Thank you for your time yesterday. It was a very overdue visit, again, I apologize for not meeting you sooner. I called you this afternoon, but received voicemail. As discussed yesterday, I will follow up with you again on Monday. We have had many discussions regarding the servers, etc and want to update you.

In regards to payment for Milestone 18, please see the wire transaction confirmation below. We look forward to the Monday build. Based on what we saw, I expect your next payment to be early next week.

CONFIRM # ~~2008103100237324~~
Amount: \$258,928.00
Pay to: TimeGate Studios, Inc
14140 Southwest Freeway, Suite 400
Sugar Land, Texas 77478
To Bank: Bank of America
Routing: ~~11300025~~
Acct: ~~48119570019~~

Ref: Inv S8-117 Milestone 18

Have a good weekend.

Kind Regards,

Melanie



Melanie Mroz | CEO, SouthPeak Games | mmroz@southpeakgames.com
Office: (817) 305.0055 | Cell: (214) 850.7441

Jackson, Jennifer

From: David Dienstbier @ SouthPeak [ddienstbier@southpeakgames.com]
Sent: Tuesday, October 21, 2008 3:06 PM
To: Chaveleh, Adel
Subject: Visit to Timegate

Hi Adel,

I just spoke with Melanie and she is very anxious to meet you as soon as it can be arranged. However, she was not able to commit to a specific time when we talked. She is in San Francisco for the rest of this week and her grandmother has become very ill so next week is a big question mark for her. She advised that she might not be available until the first week of November but will certainly let you know if that changes.

As for my visit - I would very much like to press ahead with that in order to meet yourselves and the team and then get out of your way so you can continue tracking towards the press event. If at all possible, a Monday or a Friday meeting time works best for me - as I tend to make these 3-5 hour trips by land rather than by air, but obviously I want to accommodate your schedule not my driving preferences!

I spoke with Richard over lunch about the event and he and I are still keen to move forward with it. I am sending out a reminder email to Melanie and Jonathan (head of our European operations) to make sure we are all on the same page with this. Melanie IS aware of the event, and we will pull together the information needed ASAP.

DD

Weiss, Scott

From: David Dienstbier @ SouthPeak [ddienstbier@southpeakgames.com]
Sent: Thursday, October 16, 2008 11:31 AM
To: Tim Hesse; Chaveleh, Adel; Siwiak, Robert
Subject: RE: SouthPeak and TimeGate (and GameCock)

Hey guys, its great to meet you "officially". I'm really excited about Section 8, and looking forward to working with all of you @ Timegate.

DD

From: Tim Hesse [Tim@gamecockmedia.com]
Sent: Thursday, October 16, 2008 11:23 AM
To: Chaveleh, Adel; Siwiak, Robert
Cc: David Dienstbier @ SouthPeak
Subject: SouthPeak and TimeGate (and GameCock)

Hey guys,

As you know there have been quite a few changes around and here and I want to introduce David Dientsbier, EP for SouthPeak, as he will be joining our e-mails as we all move forward.

I've given David a breakdown of who and what you do; please cc him on all emails that you would include me on.

Thanks!

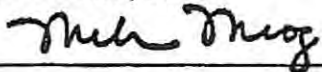
12/10/2009

b. Southpeak does not authorize Microsoft to release DLC#1 to the general public within 48 hours of receiving certification approval on DLC#1.

4. All other terms and conditions of the Publishing Agreement will remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment 4 as of the dates set forth below their respective signatures.

GONE OFF DEEP, LLC

By: 

Name: Melanie Morrow

Date: 10/14/09

TIMEGATE STUDIOS, INC.

By: 

Name: Adel Chaveles

Date: 10/20/09



Section 8 Reveals New X Server for the Xbox 360

Wednesday, August 12, 2009 9:56 AM

(Source: Business Wire) Section 8 publisher SouthPeak Interactive Corporation (OTCBB: SOPK) along with developer TimeGate Studios, is set to break new ground on the Xbox 360® video game and entertainment platform from Microsoft by supporting X Server functionality, an option where players can run their own dedicated servers using a Windows®-based PC. An X Server can handle up to 32 players at once, resulting in one of the largest multiplayer games currently available on the Xbox 360. The X Server software will be distributed free of charge* upon Section 8's launch. Meanwhile, PC gamers can also run dedicated servers for the PC version of the game allowing up to 40 simultaneous players. More information and availability of the X Server and PC Server software will be available at launch on www.joinsection8.com.

This added functionality is by no means necessary to enjoy the game since Section 8 also features a single player campaign mode and offline 'instant action' where artificially intelligent 'bots' take the place of human opponents. To make sure Section 8 enters battle with all guns blazing, SouthPeak Games will host official ranked PC and X Servers in locations around the world. When dedicated servers are not used, Section 8 supports up to 32 players on PC and 16 on Xbox 360.

"FPS fans looking for the perfect multiplayer game expect fast, reliable servers when they're playing online. We go one step further by offering an increased player count and boosting the game play experience to a new level," said Richard Iggo, VP of Marketing at SouthPeak. "We're confident that Section 8's incredible team-based combat and our adoption of cutting-edge server technology provide an experience unlike anything else out there."

Section 8 is available on PC and Xbox 360 on September 1 in North America.

*Internet connection fees are the responsibility of the player.

About SouthPeak Games

SouthPeak Interactive Corporation develops and publishes interactive entertainment software for all current hardware platforms including: PLAYSTATION®3 computer entertainment system, PSP® (PlayStation® Portable) system, PlayStation®2 computer entertainment system, Xbox 360® videogame and entertainment system, Wii, Nintendo DS and PC. SouthPeak's games cover all major genres including action/adventure, role playing, racing, puzzle strategy, fighting and combat. SouthPeak's products are sold in retail outlets in North America, Europe,

Australia and Asia. SouthPeak is headquartered in Midlothian, Virginia, and has offices in Grapevine, Texas and Leicester, England.

For a comprehensive investor relations portal complete with fact sheets, presentations, interviews and video (when available), please navigate to: www.trilogy-capital.com/autoir/sopk_autoir.html

For additional information, please visit SouthPeak's corporate website: www.southpeakgames.com

About TimeGate Studios

TimeGate Studios is a world-class game development studio that boasts a record of huge success since its founding in 1998. Headquartered in Sugar Land, TX, TimeGate has released seven award-winning products; three of which are based on TimeGate-owned intellectual properties. In addition to its Section 8 development efforts, TimeGate is currently creating several new original properties that have yet to be announced for next-generation platforms. For more information please visit www.timegate.com

Xbox, Xbox 360, and Xbox LIVE are trademarks of the Microsoft group of companies.

A service of YellowBrix, Inc.

Rate this Commentary

Comments (0)

No Comments

SEARCH

All Products ▾

SEARCH

- XBOX 360**
- All
 - Action
 - Fighting
 - Movies & TV
 - Music & Party
 - Puzzle & Cards
 - Role-Playing
 - Shooter
 - Simulation
 - Sports
 - Strategy
- \$19.99 & Under
- Accessories
- Price Drops
- Strategy Guides
- Systems
- Used Games

- GIFT CARDS**
- Buy Gift Cards
 - Check Balance

- EDGE CARDS**
- More Info
 - Check Balance

NEWSLETTER

Enter your e-mail **GO**

Sign up for our weekly ad exclusive offers and more!

- SHOP BY ESRB**
- Everyone
 - Everyone 10+
 - Teen
 - Mature
 - About ESRB Ratings

- SPECIALTY**
- Blog
 - GameStop Cinema
 - Trade-In Offers
 - Alienware
 - Tournaments
 - Sweepstakes
 - Playground

Section 8



NEW

\$39.99

Currently Not Available Online

Price Drop - Old Price: \$59.99 Save \$20.00

PRE-OWNED

\$32.99

Currently Not Available Online

Price Drop - Old Price: \$44.99 Save \$12.00

Online price only.

This pre-owned product is guaranteed to work and with original cover art and instruction manual.

CHECK IN-STORE AVAILABILITY Search by ZIP

<p>Publisher: SouthPeak Interactive</p> <p>Developer: Timegate Studios</p> <p>Platform: Xbox 360</p> <p>Category: Shooter</p> <p>E-Mail This Page</p>		<p>QUICK</p> <ul style="list-style-type: none"> We / Recd Scre Exp Spe Revi Rela
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

NOTICE Online price is not valid at local stores.

gameinformer Rated 6.5 out of 10 by Game Informer.

Summer Budget Travel Tips from Gadtling

Network Access Message: The page cannot be displayed

Information: The page cannot be displayed. You are trying to reach a page that is not available. Please check the URL and try again.

Try the following:

- Refresh the page. Sometimes the page may not load properly.
- Check the URL. Make sure you are entering the correct address.
- Check your Internet connection. Make sure you are connected to the Internet.

GAMEDAILY AGE MY AGE MAIL MAKE AGE MY HOME PAGE

ENTERTAINMENT NEWS GAMES MOVIES MUSIC RADIO TELEVISION TV


downloads news web images videos

downloads games news

sign in or register

Southpeak Interactive records small profit in latest quarter

Posted Nov 11th 2009 3:00PM by John Callahan
Filed under: Biz



Small game publisher Southpeak Interactive seems to be doing well. Its latest financial numbers for the quarter that ended on September 30 showed that revenues were \$16.7 million compared to \$8.3 million for the same period a year ago. The company recorded a net profit of \$1.3 million compared to a loss of... oddly enough, \$1.3 million for the same period a year ago.

Southpeak's big PC game for the time period of its last quarter was *Section 8*, the last game from the now former line-up from publisher Gamecock that Southpeak acquired last year. At the moment the only upcoming PC game that's been announced from the publisher is the third person action title *Edge of Twilight*.

Tags: section-8, southpeak, southpeak-games, southpeak-interactive

Source: 0 Comments

Permalink Email this Share

The Best of Big Download: November 30-December 6 (12/06/2009)
Direct2Drive has Majesty 2 on sale today for 81 percent off (12/06/2009)
Threewave Software lays off workers, CEO denies total shut down (12/06/2009)
EA CEO: Pandemic Studios was too expensive to continue (12/06/2009)
Reminder: Last day for Solum Infernum giveaway (12/06/2009)

Email Confirm Weblogs

Microsoft to offer full game downloads on Games For Windows Live December 15
Brink has blinked, game delayed from spring to fall 2010
Serious Sam HD: The Second Encounter coming in early 2010
Kane and Lynch 2: Dog Days officially announced
Magic: The Gathering - Duels of the Planeswalkers coming to the PC

Freeware Friday: Probability 0
Feature: Unreal Tournament and Quake III Arena - 10 Years Later
Contest: Win one of three Steam codes for Serious Sam HD: The First Encounter
The Wake of Guybrush Threepwood
Review: Serious Sam HD: The First Encounter

Betas (232)
Biz (1754)
Contests (227)
Culture (1014)
Demos (430)
Downloads (3553)
Expansions (477)
Features (552)
Full Games (89)
Hacks (6)
Hands-on (242)
Hardware (473)
Homebrew (21)
Interviews (219)




Advertisment

RSS Feed Contact Us Send us tips


The Wake of Guybrush Threepwood
MUD: TV Screenshots
The Scourge Project Screenshots
The Top 10 PC Game News Stories For
Empire: Total War - Elite Units of America
Grand Ages: Rome Reign of Augustus
Best (And Worst) in PC Download Services
Section 8: Seek And Destroy Map Pack
EVE Online: Dominion

Contest: Win one of three Steam codes for Serious Sam HD: The First Encounter (96)
Contest: Win one of three downloadable copies of Solum Infernum (63)
Valve: Our customers want Steamworks features in their PC games (6)



- Home
- Games
- News
- Store
- Corporate
- Support
- Forums
- Contact

Browse Our Titles

Game Search 

- PC
- Mobile
- PlayStation®2
- PlayStation®3
- PSP® System
- Nintendo DS™
- Wii™
- XBOX 360®

SouthPeak News

Section 8™ Update Deployed on Xbox 360

SouthPeak and TimeGate Studios Section 8™ on Xbox 360 received an update to address player feedback from the first month of play. Based on responses from players, TimeGate has improved everything from the auto-match system to how the tank controls work. Section 8's massive multiplayer battles are now even more intense and more rewarding than before.

Some of the improvements players will find include:

- +Tank controls have been tuned, making them more intuitive and responsive
- +The improved automatch system offers enhanced responsiveness when searching for a server
- +Bot AI has been improved. Bots will now follow and defend allies and will pursue retreating targets more aggressively
- +An improved stat tracking framework

The update is available now for Xbox 360 and also Games for Windows LIVE. See below for the complete list of updates included in the title update:

Section 8(TM)
PC Version 1.1

MAJOR

- + Automatch: several improvements to improve responsiveness and likelihood of finding a good match
- + Ranked Stats: fixed some issues with stats getting lost, new records now show at match end
- + Tank: Improved controls
- + Achievements: Fixed issues with not being awarded in certain situations
- + Projectiles: Improved behavior in high latency situations to be more reliable
- + AI: bots will now help defend human squadmates
- + Multiplayer: several improvements related to high latency situations

VEHICLES

- + Heavy Tank controls were adjusted to make driving more intuitive. The main turret will now turn with the vehicle.
- + Modified vehicle FoV to show more of the vehicle's exterior.
- + Changed tank second seat name to "Minigun."
- + Tank corpses will no longer hover after they are destroyed.
- + Fixed situations where the Heavy Armor would display a knife kill icon instead of the fist icon.
- + Fixed a problem where players could exit a vehicle and end up inside of structures.
- + Removed an exploit that allowed users to increase the movement speed of vehicles by moving side to side.
- + Fixed a bug that would break the player's health display if they died while piloting a Heavy Armor.

GEAR

- + Fixed bug where client and server would get out of sync about the equipped gear
- + Fixed a bug where a player's weapon could disappear after interrupting the set aside animation.
- + Fixed a bug where a player could lose the ability to switch weapons.
- + Fixed a bug where equipment would fail to function in high latency scenarios.
- + Fixed exploit which allowed using gear while sprinting.
- + Adjusted Friendly Fire Penalties for Weapons.
- + Shotgun in singleplayer gametypes will now have the same magazine size (7) as multiplayer gametypes
- + Slightly decreased the piercing damage dealt by the Machinegun's rounds, and, the Assault Rifle's piercing rounds. This does not affect the Assault Rifle's non-piercing rounds.
- + Fixed a bug where the missile launcher's projectile would travel through certain game actors during low performance situations.
- + Mortars will now split and detonate more consistently on a target in high latency situations.
- + Improved mortar targetting in certain situations.
- + Fixed the missile launcher's animation pop when zooming out immediately after firing.
- + Microsensors and Det Packs will now remain deployed if a player switches to another loadout which contains the Microsensor or Det Packs.
- + Shotgun and Machine Gun descriptions now indicate which feats they contribute to.


Latest Reviews

My Baby First Steps


"If you have a young girl (or boy) on your Christmas list this year and they enjoy video games and playing with dolls. My Baby First Steps is a great choice." - 3 P's in a Pod

[More Info >](#)


Online Community




Facebook
Join our group and keep in touch with us



Twitter
Follow us and talk to us @SouthPeakGames.




Forums
Sign up, log in, and join the community



Newsletter
Get SouthPeak news straight to your inbox.

Upcoming Title



Fast Food Panic

Keeping a top-quality restaurant takes a lot of work, and your waitress will need lots of help.

GAMES **LIVE** HARDWARE DIRECTX FORUMS COMMUNITY ABOUT GFW SUPPORT



DETAILS



BUY NOW

Title: **Section 8**
 Developer: **TimeGate Studios**
 Publisher: **SouthPeak Games**
 Official Website: **Section8**
 Genre: **Shooter**
 Release Date: **09/04/2009**

Add-on Content



Seek and Destroy Map Pack:

The Seek and Destroy Map Pack expands the Section 8 experience with three new maps for the Multiplayer and Instant Action game modes. Players fight for control of a geothermal energy plant on the salt flats of New Madrid in "Devil's Backbone" and battle in the narrow confines of a hazardous valley on the planet Titan in "Hornet's Nest." "Azure Basin" is set high atop a mountain plateau where a massive

Section 8™

On the war-torn planets of tomorrow, mankind's greatest battle is about to begin. With its frontier colonies devastated by a growing insurrection, Earth dispatches the elite 8th Armored Infantry (nicknamed "Section 8") to repel the coming onslaught. The nickname refers to an old United States military regulation where a soldier would be dismissed from service through being mentally unfit for duty. The near-suicidal missions that this division volunteers for brands them as insane by other military units. Section 8 deploys by 'burning in' from their orbital drop ships tens of thousands of feet above the battlefield, utilizing the most advanced arsenal of military hardware.

Section 8 is a sci-fi first person shooter delivering the ultimate multiplayer experience with up to 16 Player matches.

- Determine your own role in combat through customization of weapons and armor.
- Alter the flow of battle by calling in 'deployables' and triggering objective-based missions affecting the entire battlefield.
- Burn in to battle from 15,000 feet; see the action unfolding below as you descend.



Violence

MINIMUM REQUIREMENTS

OS: **Windows Vista SP1 / Windows XP SP3**
 Processor: **Pentium 4 3Ghz or higher**
 RAM: **1GB XP, 2GB Vista**
 Memory: **6GB free hard drive space**



SOUTHPEAK INTERACTIVE CORPORATION AND SUBSIDIARIES
Notes to Condensed Consolidated Financial Statements
(Unaudited)

1. Summary of Significant Accounting Policies, continued

The accounting policies followed by the Company with respect to unaudited interim financial statements are consistent with those stated in the Company's annual report on Form 10-K. The accompanying June 30, 2009 financial statements were derived from the Company's audited financial statements. These unaudited condensed consolidated financial statements should be read in conjunction with the audited consolidated financial statements and the notes thereto included in the Company's annual report on Form 10-K for the year ended June 30, 2009 filed with the SEC.

The accompanying unaudited condensed consolidated financial statements include the accounts of SouthPeak Interactive Corporation, and its wholly-owned subsidiaries SouthPeak Interactive, L.L.C., SouthPeak Interactive, Ltd., Vid Sub, LLC, Gone Off Deep, LLC, and Gamecock Media Europe Ltd. All intercompany accounts and transactions have been eliminated in consolidation.

The preparation of financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the dates of the financial statements and the reported amounts of net revenues and expenses during the reporting periods. The most significant estimates and assumptions relate to the recoverability of advances on royalties, intellectual property licenses and intangibles, valuation of inventories, realization of deferred income taxes, the adequacy of allowances for sales returns, price protection and doubtful accounts, accrued liabilities, the valuation of stock-based transactions and assumptions used in the Company's goodwill impairment test. These estimates generally involve complex issues and require the Company to make judgments, involve analysis of historical and the prediction of future trends, and are subject to change from period to period. Actual amounts could differ significantly from these estimates.

Subsequent events have been evaluated through the filing date (November 10, 2009) of these unaudited condensed consolidated financial statements.

Concentrations of Credit Risk, Major Customers and Major Vendors

The financial instruments which potentially subject the Company to concentrations of credit risk consist primarily of cash balances with financial institutions and accounts receivable. The Company maintains cash in bank accounts that, at times, may exceed federally insured limits. The Company has not experienced any losses in such accounts and believes it is not exposed to any significant risks on its cash in bank accounts.

The Company does not generally require collateral or other security to support accounts receivable. Management must make estimates of the uncollectibility of the accounts receivable. The Company considers accounts receivable past due based on how recently payments have been received. The Company has established an allowance for doubtful accounts based upon the facts surrounding the credit risk of specific customers, past collections history and other factors.

The Company has three customers, Wal-Mart, GameStop, and Topware Entertainment, which accounted for 20%, 15%, and 10%, respectively, of consolidated gross revenues for the three months ended September 30, 2009. Wal-Mart, GameStop, Navarre Corporation, and PDQ Distribution Limited accounted for 18%, 17%, 10%, and 10%, respectively, of consolidated gross accounts receivable at September 30, 2009. For the three months ended September 30, 2008, Wal-Mart, GameStop, and Circuit City accounted for 20%, 14%, and 10%, respectively, of consolidated gross revenues. Navarre Corporation, GameStop, and Wal-Mart accounted for 20%, 17% and 15%, respectively, of consolidated gross accounts receivable at June 30, 2009.

The Company publishes videogames for the proprietary console and hand-held platforms created by Microsoft, Sony and Nintendo, pursuant to the licenses they have granted to the Company. Should the Company's licenses with any of such three platform developers not be renewed by the developer, it would cause a disruption in the Company's operations. The Company expects that such contracts will be renewed in the normal course of business.

EXHIBIT “K”

SOUTH PEAK JUSTICE

This blog exists to keep the actions of SouthPeak Games, a publicly held company, open to the public and transparent. Our mission is to converge and publish the accounts of vendors who are entangled with SouthPeak over alleged unethical business practices and defaulted payments on legally owed debts.

We'll put everything out in the open. The rest is up to the Courts, and you, the consumer, to decide.

MORE LEGAL TROUBLE FOR SOUTHPEAK GAMES

Some information was passed along to us regarding a massive lawsuit in the the UK vs. SouthPeak Games.

According to SouthPeak's official filing with the SEC on May 15, 2009, CDV Software Entertainment filed a complaint vs SouthPeak Interactive Ltd. alleging various breach of contract and other claims related to a publishing and distribution agreement. Gamecock Media Europe, Ltd., the UK entity of Gamecock purchased by SouthPeak last November, was also named. The official complaint:

CDV is seeking the return of \$4,590,000 in videogame development advances, an injunction against SouthPeak and its subsidiaries, €362,508, and £95,228 in specified damages, further damages to be assessed, and discretionary interests and costs.

Gamecock Media Europe, Ltd (owned by SouthPeak Interactive), filed a smaller counterclaim against CDV in defense.

According to news in the UK, some former US Gamecock employees who were dissolved in the SouthPeak purchase have gone across the pond to testify. A verdict is not expected until later in the year. We'll keep you posted.

An excerpt of the official SEC filing is below:



GAMASUTRA LOOKS SOUTH

CONTACT US

If you or your company money or have been hurt doing business with SouthPeak Games...

PLEASE BE IN TOUCH

All sources will be treated absolutely confidential unless otherwise desired.

OUR MISSION + DISCLOSURE

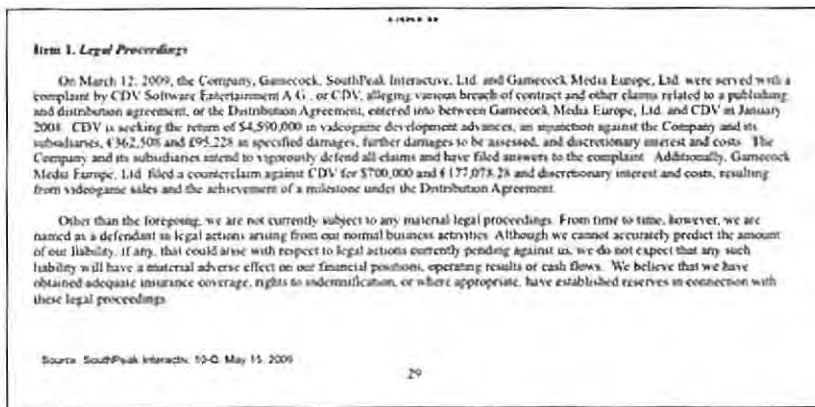
This website was formed to expose the alleged bad faith dealings of SouthPeak Games.

As such, we are in no way affiliated with SouthPeak Games. Check out our full legal disclaimer at the bottom of the site.

WRITE TO SOUTHPEAK

Take a minute and write to SouthPeak Games to let them know what you think of the hardworking vendors and independent contractors.

PRINCIPLE OWNER Teri



Gamasutra is the latest game news site to report on the allegations of SouthPeak defaulting on payments to vendors and contractors of Gamecock. A link to the full article is below:

Former Gamecock CEO Discusses Company's Demise, Alleges Contractor Payment Issues



A HISTORY OF FRAUD AND CORRUPTION?

Terry Phillips is the principle owner and Chairmen of the Board for SouthPeak Games. On May 2, 2007, the Securities and Exchange Commission wrapped up a case against Terry Philips and his former company, game publisher "Capitol Distributing, LLC" for violations of anti-fraud, financial reporting, and record-keeping. Here are some excerpts from the official SEC Litigation Release:

The Securities and Exchange Commission ("Commission") today announced that it filed a settled civil action in federal district court against video game distributor Capitol Distributing, L.L.C. ("Capitol") and one of its owners, Terry M. Phillips ("Phillips").

...Specifically, the complaint alleges that Take-Two shipped to Capitol hundreds of thousands of video games, typically at the end of reporting periods, and fraudulently recorded those shipments as sales when, in actuality, Capitol only temporarily parked the games for Take-Two and did not intend to sell them....

...According to the complaint, Capitol in two instances returned the games to Take-Two under invoices falsely describing them as "purchases" of "assorted product." The scheme enabled Take-Two to report approximately \$15 million in phantom revenue from four separate parking transactions with Capitol.

tphillips@southpeakga

PRESIDENT & CEO Mela

mmroz@southpeakgam

HELPFUL SOURCES F
CLAIMS

Texas Small Claims Co
Tarrant County JP Cou
Virginia Secretary of S

OFFICIAL SOUTHPEAK
PRESS RELEASES

3rd Quarter 2009 Resu
2nd Quarter 2009 Resu
SouthPeak Acquires G

BLOG ARCHIVE

▼ 2009 (7)

▼ August (7)

MORE LEGAL TRO
SOUTHPEAK G/
GAMASUTRA LOO
A HISTORY OF FR
CORRUPTION?
JOYSTIQ DIGS UP
SOUTHPEAK G/
TIPS FROM CONTI
THE SMALL CL/
PROCESS ...
TROUBLE GETTIN
ABOUT THE ACQL
GAMECOCK

LEGAL SEARCH THIS BLOG

DISCLAIMER

ALL INFORMATION ON THE SOUTHPEAK
WLB SITE (THE "SITE") HAS BEEN COMP
PUBLISHED NEWS ARTICLES, PRESS RE
AND PERSONAL ACCOUNTS OF VENDOR
HAVE DONE BUSINESS WITH GONL OFF D
AND/OR SOUTHPEAK GAMES. ALTHOUGH
INFORMATION FOUND ON THE SITE IS B
TO BE RELIABLE, NO WARRANTY, EXPRE
IMPLIED, IS MADE REGARDING THE ACC
ADEQUACY, COMPLETENESS, LEGAL
RELIABILITY, OR USEFULNESS OF A
INFORMATION, EITHER ISOLATED OR I
AGGREGATE. ALL INFORMATION IS PR
"AS IS." THE SOUTHPEAKJUSTICE WEB SI
INFORMATIONAL BLOG AND DOES NOT I
ANY LEGAL ADVICE. USERS OF THIS W
SHOULD CONSULT WITH THEIR OWN L
FOR LEGAL ADVICE. THIS WEB SITE
GENERAL SERVICE THAT PROVIDES L
INFORMATION OVER THE INTERNET. WE
A LAW FIRM NOR ARE WE ASSOCIATED W
LAW FIRM. THE INFORMATION CONTAI
THE SITE IS GENERAL LEGAL INFORMAT
SHOULD NOT BE CONSTRUED AS LEGAL
TO BE APPLIED TO ANY SPECIFIC FAC
SITUATION. AS THE LAW DIFFERS IN
LEGAL JURISDICTION AND MAY BE INTE
OR APPLIED DIFFERENTLY DEPENDING C
LOCATION OR SITUATION, THE INFORMA
USE OF DOCUMENTS ON THE SITE IS I
SUBSTITUTE FOR THE ADVICE OF A LA

Check out the Capitol Distributing, LLC address. Look familiar?

POTENTIAL FRAUD AT SOUTHPEAK GAMES?

<http://www.southpeakjustice.com/>

laws in the business dealings of Terry Phillips' new publisher, SouthPeak Games, please contact the SEC immediately



SOUTHPEAK JUSTICE IS IN NO WAY AFFILIATED WITH SOUTHPEAK GAMES, OR ANY LEGAL INCARNATION OF SOUTHPEAK INTERACTIVE CORPORATION. "SOUTHPEAK", "SOUTHPEAK INTERACTIVE", "SOUTHPEAK GAMES" AND ALL RELATED LOGOS ARE TRADEMARKS OR REGISTERED TRADEMARKS OF SOUTHPEAK INTERACTIVE CORPORATION.

JOYSTIQ DIGS UP THE SOUTHPEAK GAMES DIRT

Joystiq, one of the most respected sources of game industry news, just published a detailed article on the Gamecock / SouthPeak fallout:

Gamecock acquisition goes south - vendors accuse SouthPeak of not paying up

In the article, Mike Wilson, industry veteran and former Gamecock CEO, goes on record for the first time about the acquisition, and provides some insight into the experience on the Gamecock corporate end. One of the most telling excerpts from the interview is below:

"The management partners at Gamecock were clearly not going to benefit from this sale at all, except in some hope that SouthPeak would leave our Austin operation in place, which is what they said they wanted to do. So, their idea for Harry and I to be able to make some money from the deal and feel good about moving forward, was to work to 'reduce the liabilities', and we were offered a commission basically on any moneys we could talk our partners out of taking. We have no experience in such things, but I'd imagine this is a pretty typical practice in public companies, so initially we said that we would of course talk to our vendor partners and see what could be done. Again, we were trying to play 'good company men' and hope for the best.

But it became apparent very quickly that what they actually meant by that was that they were going to try to pay as little as possible ... meaning telling everyone basically to 'screw off, sue us' if they wouldn't accept half or less of what they were rightfully owed. Harry and I clearly were not interested in this, and it became clear that us working with SP wasn't going to work out, and that they truly had no intention of keeping the Austin team in place."

This bit from an anonymous Gamecock contractor quoted in the article seems particularly relevant too:

- [DSi-XL](#)
- [VC in Brief videos](#)
- [Wii Rock Band updates](#)
- [Send Feedback](#)
- [RSS Feeds](#)
- [Send us tips](#)
- [About](#)

← →

- 1 hour ago on **Joystiq Nintendo**: [Prepare for takeoff with this Sky Crawlers trailer](#)



[Review: Silent Hill](#)



[Interview: Frank Pearce, Blizzard Co-founder](#)



[Review: Zelda: Spirit Tracks](#)



[Review: The Saboteur](#)

Gamecock acquisition goes south - vendors accuse SouthPeak of not paying up

by [Ludwig Kietzmann](#) { Aug 14th 2009 at 4:00PM }



The story of Gamecock Media Group never had a very satisfying ending. Created by industry entrepreneurs Mike Wilson, Rick Stults and Harry Miller, the company set out to buck-buck-buck the trend -- a perceived sequence of retreads, rehashes and remakes that characterized a rapidly expanding games industry. The games were undoubtedly indie, the choices bizarre and the rooster costumes touted by Wilson and the gang were *just plain weird*. But not nearly as weird as the David vs. Goliath scenario that ended with the lowly rock slinger shaking hands with his imposing foe.

But in October of 2008, SouthPeak Interactive Corporation stepped out of the role of opposition, instead donning the chivalrous and sharply dressed persona of corporate savior. A shaky economy had compelled Gamecock's main investor to tighten the belt, an act which former Gamecock CEO (and

subsequent co-founder of Devolver Digital) Mike Wilson notched up as a swift and unexpected crisis. "He and his board decided that with their main business bleeding so badly, they needed to cut off anything 'ancillary'," Wilson said, "such as his investment in outside businesses, one of which was our company." With the timing sitting uncomfortably close to the Christmas rush and promising titles like Legendary and Mushroom Men on the verge of completion, Gamecock needed help.

"And suddenly there was NO money. So, we literally had to find someone to acquire us immediately ... someone who knew the business, could see the imminent revenues versus liabilities, and move very fast." And wouldn't you know it: for a Goliath, SouthPeak was pretty fast. "A week later, we were bought, and all we could do was put on a happy face and hope for the best."

The corporate celerity was largely due to Terry Phillips, chairman of SouthPeak's board and majority owner of the company. "Hindsight is 20/20, and you have to credit Mr. Phillips for moving so quickly," said another Gamecock investor, who wished to remain anonymous. "Entering the controlling partner into an exclusive negotiation was the move that won the deal for him, something that none of the rest of the partners would have signed on for, and a choice that that I'm sure our main partner regrets now."

Regrets seem to be more prevalent in the year following Gamecock's acquisition. While the company was saved from an untimely demise, numerous former vendors who had contributed to the company's lineup -- be that through dialogue editing, video editing or music composition -- now claim to have experienced difficulty obtaining payments owed. Some have already filed lawsuits in small claims court for money that they say was promised by Gamecock, but now legally owed by SouthPeak.



Gamecock co-founders Mike Wilson (left) and Harry Miller (right)

A former Gamecock producer has taken upon himself to speak up for at least four unpaid vendors, acting as informal translator to one of the world's toughest languages: Legalese. "I can think of no reason why my four work-for-hires would not be paid, especially once SouthPeak's lawyer contacted them early on and acknowledged that their invoices were good and would be honored and paid in

full," he said, opting to remain anonymous. "Ever since then, for nearly a year, they have been told a check would be sent very soon. At one point, approximately 8 months ago, they were even told that their checks were in the mail."

The outstanding amounts claimed by individual vendors range from as little as \$320 to well over \$3000. But there are even bigger gaps in payment, noted Mike Wilson. "These ranged from our testing house, Cyan Worlds, who ended up doing huge layoffs because of non-payment, to the big magazine and website publishers, to the smallest of companies and individuals hired for webwork, video production, packaging, you name it. 800 dollars to 800,000 dollars, they were all given essentially the same treatment." And it's this alleged treatment that prompted many of the smaller unpaid vendors to go to court purely out of principal.

"We work in a small industry and I've never seen such ruthless cutthroat behavior from a company -- it's just bad business," said one former Gamecock contributor, addressing a legal chicane in SouthPeak's driveway. The word coming down from on high, according to communications between vendors and legal representatives, indicated that SouthPeak's purchase of Gamecock unexpectedly placed the company into financial dire straits, rendering payment to vendors financially difficult, if not unlikely.

The excuse didn't sit well with Mike Wilson, who noted that none of the carried-over liabilities should have come as a surprise. "All moneys owed and receivables booked were disclosed in detail before the transaction could close, with us and our investors having to sign declaring that this was 'everything'," he said. "Typical stuff, but at lightspeed due to the situation." This is echoed by a Gamecock investor: "The investor partners' entire interest in doing this deal was to eliminate liabilities. We would not have signed on had we anticipated lawsuits, and Mr. Phillips understood that." SouthPeak's supposed destitution has also frustrated those looking at the company's most recent financial reports, which indicated positive increases in revenue. [**Update:** In contrast, SouthPeak's stock, has had a rough year.]

Also of concern was the lack of hard, signed contracts between Gamecock and many of its vendors. "It is my understanding that in this business, as in many of the others I'm involved in, vendor agreements are most often a simple invoice for services unless a full contract is warranted. Rick Stults, Gamecock's CFO, was pretty buttoned up with the accounting, as we demanded weekly reports that required backup for funding all along," the investor added.

This understanding is also prevalent among all the affected vendors. An unpaid music composer for Gamecock noted, "While I had not signed a formal contract for each project, on each of my invoices to the company, it was noted that payment for each track would execute a buy out of the rights of the music for use in the trailer." A dialogue editor noted that his contract, like "most video game work," had been verbal. According to the aforementioned Gamecock producer, vendors "were officially sanctioned by management and their invoices were officially honored."

Curiously, some of the vendors were deemed worthy of payment -- provided they accepted reduced amounts immediately. Several were offered an immediate, time-bound 25% settlement, with others being offered anywhere between 50% and 80% settlement spread over more time. Velvet Assassin dialogue editor Barry Leitch was denied payment simply because he had waited "too long" to accept a settlement. He has since given up the fight. "The game industry is infamous for ridiculousness when it comes to being paid for work you've done," he said. "I chose simply to focus elsewhere."

Former Gamecock CEO Mike Wilson had also been involved with the attempts to actively reduce

liabilities. "The management partners at Gamecock were clearly not going to benefit from this sale at all, except in some hope that SouthPeak would leave our Austin operation in place, which is what they said they wanted to do. So, their idea for Harry and I to be able to make some money from the deal and feel good about moving forward, was to work to 'reduce the liabilities', and we were offered a commission basically on any moneys we could talk our partners out of taking," he explained. "We have no experience in such things, but I'd imagine this is a pretty typical practice in public companies, so initially we said that we would of course talk to our vendor partners and see what could be done. Again, we were trying to play 'good company men' and hope for the best.

"But it became apparent very quickly that what they actually meant by that was that they were going to try to pay as little as possible ... meaning telling everyone basically to 'screw off, sue us' if they wouldn't accept half or less of what they were rightfully owed." This was the catalyst for Wilson and Miller's departures, and they ultimately only walked away with severance packages.

The story given to several vendors, however, is that Gamecock's upper management simply took the money and ran, a scenario which Wilson vehemently disagrees with: "We have all worked in this industry for a long time, and continue to work in it, and it's hard enough to do the right thing in this business when your competition is bigger and almost universally more cutthroat in its practices, without someone taking your legs out in verbal conversations behind closed doors."

Several dissatisfied vendors attempting to obtain payment from SouthPeak have claimed the entire process has been hampered by poor communication, legal stalling and, according to one in the midst of a lawsuit, SouthPeak representatives "just basically slandering the entire reputation of Gamecock."

In defense of its own reputation, SouthPeak declined to answer any questions and instead offered the following statement: "SouthPeak continues to diligently work through the outstanding details related to the acquisition of Gamecock Media Group. We cannot comment on any pending litigation other than those cited in our public filings."

Much like the one surrounding Gamecock Media Group, this story does not have a very satisfying ending. But as one of the company's investors reveals, it could have taken a very different turn after the period of buyout negotiation: "There were other legitimate offers out there that came literally the day after the period expired."

> Page 2: Interview with Mike Wilson

Tags: [acquisition](#), [buyout](#), [Gamecock](#), [Gamecock-Media-Group](#), [mike-wilson](#), [SouthPeak](#), [SouthPeak-Interactive](#)

- [Permalink](#)
- [Email this](#)
- [Tweet this!](#)
- [Print this](#)
- [41 Comments](#)
- [Share](#)

POWERED BY **sphere**



[Get a WordPress.com Blog](#)

Neutral Citation Number: [2009] EWHC 2965 (Ch)

Case No: HC09C00767

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
INTELLECTUAL PROPERTY

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20 November 2009

Before :

MRS JUSTICE GLOSTER, DBE

Between :

CDV SOFTWARE ENTERTAINMENT AG	<u>Claimant</u>
- and -	
(1) GAMECOCK MEDIA EUROPE LIMITED	<u>Defendants</u>
(2) SOUTHPEAK INTERACTIVE LIMITED	
(3) SOUTHPEAK INTERACTIVE CORPORATION	
(4) GONE OFF DEEP LLC	

Robert Howe Esq, QC and Mark Vinall Esq
(instructed by **Harbottle & Lewis LLP**) for the **Claimant**
Duncan McCall Esq, QC and Benjamin Pilling Esq
(instructed by **Bird & Bird LLP**) for the **Defendants**

Hearing dates: 30th June 2009 – 3rd July 2009; 22nd July 2009;

Judgment

Mrs Justice Gloster, DBE:

Introduction

1. This is an expedited trial, on issues of liability only, ordered by Mr. Justice Morgan on 19 March 2009 in relation to a dispute concerning various computer/video games ("the Games" or "the Products").
2. The Claimant ("CDV") is a company incorporated in Germany and listed on the Frankfurt Stock Exchange, carrying on business as a distributor of video games. The First Defendant ("Gamecock") is a company incorporated in England and Wales carrying on business as a publisher of video games. Gamecock is and was at all relevant times a wholly-owned subsidiary of the Fourth Defendant, Gone Off Deep LLC ("Deep"), a company incorporated in Delaware and based in Texas, doing business under the name "Gamecock Media Group".

High Court Unapproved Judgment:
No permission is granted to copy or use in court

CDV Software Entertainment AG v
Gamecock Media Europe Ltd & Others



20. Gamecock also had its own financial difficulties. Unknown to CDV at the time, when Gamecock entered into the LOI, and then the Agreement, it was in a pressing financial condition. Thus on 28 January 2008, Mike Wilson, former Chief Executive Officer of Gamecock, told Mr. Allbritton (the main Gamecock ultimate investor) that the failure to make payments to the developers and agencies was causing a lot of stress with those relationships; and that Gamecock had been delaying payment of as many bills as possible. On 12 February 2008, it was reported internally within Gamecock that they were in breach of every contract with their developers with the exception of *Insecticide*; that they were expecting written breach notices from the remaining studios by the end of the week; that their cashflow in the near term depended on the CDV deal completing; and that, unless they could come up with a satisfactory strategic plan, they would "go over the cliff". On 14 March 2008, Graeme Struthers (European Managing Director of Gamecock until 4 December 2008) ("Mr. Struthers") reported that Gamecock was "effectively out of funds", and accordingly "at a standstill". These difficulties at Gamecock caused a number of problems with the development of the Products. The development of *Insecticide* ran into serious problems, so that the Product was repeatedly delayed and, in the event, Gamecock never delivered the finished version of this Product in either format. CDV also began to hear reports that Gamecock was not paying developers promptly or at all, with the result that many of the other Products were also delayed. This was of concern to CDV because its release schedule was designed to ensure that all of the Products subject to the agreement, (except one, *Pirates vs. Ninjas*) were available in good time before the Christmas 2008 selling period. It became apparent that this was unlikely to be achieved in relation to many of the Products, because of repeated delays. These included the Products which CDV regarded as the two most promising Products, on which the largest total advances were payable, namely *Mushroom Men* and *Velvet Assassin*.
21. CDV raised its concerns in correspondence, but took the view that these had not been properly addressed. Accordingly, on 22 October 2008, CDV sent a notice indicating that it intended to terminate the Agreement on 27 October, unless CDV and Gamecock agreed to the contrary prior to that time. That deadline was extended several times by CDV in an effort to find a solution to the problems which had arisen.
22. On 21 November 2008, CDV retracted its threat to terminate the whole agreement, and instead gave notice under clause 3.1(b) purporting to terminate in respect of specific Products only, namely *Insecticide*, *Dementium*, *Velvet Assassin*, and *Mushroom Men*. It also claimed repayment of the advances already paid in relation to those products (\$4,590,000) and its wasted costs, as it contended that it was entitled to do under clause 3.1(b) of the Agreement.
23. Gamecock at first disputed the validity of this notice, and then, on 4 December 2008, claimed that CDV's refusal to pay Gamecock additional advances and other monies (which, on CDV's case, were not due) itself constituted a repudiatory breach of the Agreement, entitling Gamecock to terminate it. Gamecock also claimed that CDV was in repudiatory "breach of an innominate term", on the grounds that a recent announcement by CDV to the Frankfurt Stock Exchange showed that CDV was not "fiscally capable" of performing its obligations, which it alleged was a fundamental breach of clause 8.1(b)(iv).